

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOSEPH D. SCOTT,)
Plaintiff,)
v.) Case No. 1:19-cv-169-SPB-RAL
CCPM MICHAEL R. CLARK,)
SUPERINTENDENT, et al.)
Defendants.)

MEMORANDUM ORDER

This *pro se* civil rights action was received by the Clerk of Court on June 11, 2019, ECF No. 1, and referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation (“R&R”) in accordance with the Magistrate Judge’s Act, 28 U.S.C. §636(b)(1), and the local rules of this Court. In his Amended Complaint, filed on October 4, 2019, ECF No. 7, Plaintiff Joseph D. Scott, an inmate at SCI-Albion, asserts claims under 42 U.S.C. §1983 against Superintendent Michael Clark, Unit Manager Keven Lantz, Deputy Superintendent Melinda Adams, Deputy Superintendent “Franz,” Chief Psychologist Stephen Reilly, and Corrections Classification Program Manager “V. Kusiak.” Plaintiff alleges that these Defendants violated his federal constitutional rights in connection with an assault that he suffered at the hands of another inmate. Plaintiff’s allegations ostensibly implicate his Eighth Amendment right not to be subjected to “cruel and unusual punishment,” as well as his Fourteenth Amendment right to substantive due process relative to his own bodily integrity.

The Defendants filed a Motion to Dismiss Plaintiff's Complaint on February 7, 2020. ECF No. 24. In their supporting brief, Defendants argue that Plaintiff has failed to state a viable claim for relief under §1983 in that he has failed to plead the Defendants' personal involvement

in the wrongful conduct he is alleging. ECF No. 25. Further, they argue that Plaintiff has not alleged facts sufficient to establish a “state-created danger” for Fourteenth Amendment purposes. Id. Plaintiff filed his brief in opposition to the pending motion on March 16, 2020. ECF No. 29.

On July 28, 2020, the Magistrate Judge filed an R&R recommending that the Defendants’ motion to dismiss be granted in part and denied in part. ECF No. 35. Specifically, Judge Lanzillo recommends that the motion be denied, except that Plaintiff’s Fourteenth Amendment “state-created danger” claim should be dismissed with prejudice and his Eighth Amendment “failure to train” claim should be dismissed without prejudice and with leave to amend.

The parties’ objections to the R&R were due on or before August 14, 2020. To date, no objections have been filed.

Accordingly, after *de novo* review of the complaint, Defendants’ motion and all related filings, together with the Report and Recommendation, the following Order is entered:

AND NOW, this 20th day of August, 2020, IT IS ORDERED that the Defendants’ motion to dismiss the complaint, ECF No. [24], shall be, and hereby is, GRANTED in part and DENIED in part as follow:

1. the motion is GRANTED insofar as it relates to Plaintiffs Eighth Amendment “failure to train” claim, which claim shall be, and hereby is, DISMISSED without prejudice to be reasserted, on or before September 15, 2020, consistent with the principles discussed in the Magistrate Judge’s Report and Recommendation;
2. the motion is GRANTED insofar as it relates to Plaintiff’s Fourteenth Amendment “state-created danger” claim, which claim shall be, and hereby is, DISMISSED with prejudice and without leave for further amendment; and
3. Defendants’ motion shall be, and hereby is, DENIED in all other aspects.

IT IS FURTHER ORDERED that the Report and Recommendation of United States Magistrate Judge Richard A. Lanzillo, issued on July 28, 2020, ECF No. [35], shall be, and hereby is, adopted as the Opinion of this Court.



SUSAN PARADISE BAXTER
United States District Judge